

PROTOCOL BETWEEN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS) AND VICTORIA LEGAL AID (VLA) FOR THE PROVISION OF INFORMATION AND THE REFERRAL OF PEOPLE INVOLVED IN CHILD PROTECTION PROCEEDINGS TO A LAWYER

July 2019

1. INTRODUCTION

- 1.1. This protocol outlines the agreed process for the Department of Health and Human Services (DHHS) to inform Victoria Legal Aid (VLA) of new protection applications by emergency care to the Family Division of the Children's Court of Victoria for the purpose of the efficient provision of legal services to the parties involved.
- 1.2. The purpose of this protocol is to:
 - 1.2.1. Improve access to legal services for children, young people, parents and other parties who are responding to protection applications pursuant to the Victorian *Children, Youth and Families Act (2005)* (the Act).
 - 1.2.2. Support consistency and quality in the delivery of the state-wide child protection duty lawyer service..
 - 1.2.3. Facilitate better communication between VLA and the DHHS in order to promote better outcomes for children and families subject to proceedings in the Family Division of the Children's Court.
 - 1.2.4. Document the statutory role and responsibilities of the DHHS and VLA, and how the two organisations will work together to ensure children, young people, parents and other joined parties are efficiently supported with legal services where eligible for duty lawyer services.
 - 1.2.5. Aid the smooth and timely operation of proceedings in the Family Division of the Children's Court of Victoria by ensuring the prompt referral of eligible parties to lawyers.
- 1.3. This protocol has been developed through consultation between the DHHS and VLA and is based on a mapping of the various referral processes previously in place in metropolitan and regional areas.

- 1.4. The DHHS and VLA agree that the best results for a child or young person, their families and any other parties to the proceedings will be achieved when all professionals involved understand, value and appreciate the importance of their respective roles and responsibilities and work together to achieve effective legal assistance and communication in the Family Division of the Children's Court of Victoria.

2. BACKGROUND

- 2.1. Access to legal assistance is an important mechanism to enable a child or young person and any other eligible party to participate in legal proceedings that affect them and to promote their legal rights in the courts.
- 2.2. The Act requires consideration of the child or young person's views and wishes, if they can be reasonably ascertained (section 10). A child, aged 10 years or more, must be legally represented in proceedings of the Family Division of the Children's Court of Victoria (section 525), except when the Court has determined they are not mature enough to instruct a lawyer, where it may appoint a 'best interests' lawyer (section 524).
- 2.3 The Act also requires, as far as practicably possible, the Court allow the child or young person's parents, who have a direct interest in the proceedings, to participate fully in the proceedings (section 525).
- 2.4. VLA manages and funds the provision of duty lawyer services for children, their families and relevant parties in proceedings of the Family Division of the Children's Court. VLA staff lawyers, private practitioners, community legal centre (CLC) lawyers, Aboriginal legal services and their agents provide these duty lawyer services when parties appear at court for the first time in a child protection court proceeding. The Child Protection Duty Lawyer Service provides the following types of services: legal information, legal advice, and in-court advocacy. Each person seeking the assistance of the Child Protection Duty Lawyer Service will be triaged and provided a service in accordance with the *Child Protection Duty Lawyer Guidelines*.

- 2.5. When making a new application by emergency care to the Children's Court, the DHHS provides information about the basis for the application, the orders sought and all relevant family members in a **Summary Information Form** (known as a Form B).¹ Provision of the Form B to VLA at the time the application is made enables VLA to refer parties to legal assistance.
- 2.6. VLA's management of the referral process is important to ensure:
- that any real and potential legal conflicts of interest are identified and avoided;
 - that continuity of legal representation for clients is maintained where possible;
 - that Aboriginal and Torres Strait Islander people are given a first choice of being represented by an Aboriginal legal service if one is available;
 - the transparency of the processes of referring clients to lawyers; and
 - the risk of delay to the progress of court proceedings is minimised.

3. SCOPE OF THE PROTOCOL

- 3.1. This protocol is not intended to be a legally binding agreement, rather a clear procedure of the process for the DHHS to notify VLA of new applications by emergency care and for VLA then to refer parties to legal assistance.
- 3.2. This protocol applies to DHHS staff involved in child protection proceedings and VLA-staff delivering services in the Family Division of the Children's Court of Victoria at all sitting locations across Victoria.

4. ROLES

4.1. Role of DHHS

- 4.1.1. The DHHS Child Protection program is a statutory service which provides a child centred and family focussed service to protect children and young people from harm as a result of abuse or neglect usually within the family unit.

¹ See annexure A

- 4.1.2. DHHS child protection practitioners are delegated to act as protective interveners under the Act to: respond to reports of suspected child abuse or neglect, undertake investigations to establish if a child is in need of protection, and if an allegation is substantiated by the investigation, to take action to reduce any risk to the child or young person. This may include submitting a protection application in the Family Division of the Children's Court of Victoria.
- 4.1.3. The Child Protection Litigation Office (CPLO) is a legal unit within the DHHS that conducts litigation on behalf of the DHHS in child protection proceedings. The litigation is conducted by the CPLO in metropolitan Melbourne and by DHHS regional solicitors, or where not available child protection practitioners, in regional areas.

4.2. Role of VLA

- 4.2.1. VLA is an independent statutory authority established to provide legal aid in the most effective, economic and efficient manner and to provide equitable access to legal aid throughout Victoria.
- 4.2.2. VLA's vision is that the child protection system advances children's best interests. To support this vision VLA is committed to ensuring that people affected by decisions or actions of the child protection system, particularly children, young people and parents, are: informed, supported to participate or have a voice in decisions that affect them, have their rights protected and upheld, and are treated fairly and according to law.
- 4.2.3. VLA staff lawyers attend the Family Division of the Children's Courts of Victoria on sitting days across Victoria to provide duty lawyer services and legal representation to clients with a grant of legal assistance.
- 4.2.4. VLA also refers parties to and funds private practitioners, Aboriginal legal services and community legal centre lawyers to provide duty lawyer services and ongoing legal representation under grants of legal assistance.
- 4.2.5. Legal representation is provided to children and young people in accordance with the Act. Legal representation for all parties assists the Court in its decision

making. Lawyers test and examine evidence and assessments made in light of the instructions given or wishes expressed by the child or young person, parent or other party.

5. RESPONSIBILITIES

5.1 The DHHS is responsible for:

- 5.1.1. Serving all parties and advising them to attend court for the first mention hearing of an application by emergency care in the Family Division of the Children's Court.
- 5.1.2. Completing the Summary Information Form (Form B) for emergency care applications.
- 5.1.3. Notifying VLA of any new applications by emergency care, regardless of the age of the child by providing a copy of the Summary Information Form (Form B) immediately following the filing of the application, to enable VLA to facilitate legal representation.
- 5.1.4. Informing VLA when a party is in a secure facility (such as prison or a mental health facility) and therefore unable to attend court in person, to enable a duty lawyer service to be organised via videoconference or other means.
- 5.1.5. Providing VLA with the DHHS child protection practitioner telephone contact details for provision to the duty lawyer acting for a child.
- 5.1.6 Referring every party to the relevant VLA contact (see Annexure B) and not directly to a lawyer.

5.2 VLA is responsible for:

- 5.2.1. Triaging and conducting the necessary legal conflict checks upon receipt of the completed **Summary Information Form (Form B)** to ensure appropriate

provision of legal services to people and referral of all eligible parties for legal assistance, when possible.

- 5.2.2. Ensuring that Aboriginal and Torres Strait Islander parties identified in the Summary Information Form, are given the first choice of being referred to an Aboriginal legal service, where available.
- 5.2.3. Referring children, young people, parents and other eligible parties to a duty lawyer at the earliest opportunity; and/or to a VLA staff lawyer, a section 29A Child Protection Panel lawyer, community legal centre or Aboriginal Legal Service for ongoing representation after receiving an initial duty lawyer service. In all matters, VLA will:
 - arrange for the referral of eligible children to a lawyer first, before referring adult parties to duty lawyers.
 - where a party has been previously represented by a lawyer who is on the VLA Child Protection panel, offer the party the first choice of being referred to the same lawyer to enable the continuity of representation where possible.
- 5.2.4. Informing the DHHS legal representative and the DHHS child protection practitioner who the duty lawyer is for each party, either in person at court, or via telephone or email if contact details are provided on the Summary Information Form.
- 5.2.5. Providing the child or young person's duty lawyer with the contact details of the DHHS legal representative and the child protection practitioner for the purpose of arranging a meeting with the child or young person either at Court or at an alternative venue.
- 5.2.6. Providing each duty lawyer with the contact details of their respective clients and a copy of the **Summary Information Form (Form B)**.
- 5.2.7. Providing the parties who are entitled to legal information only, pursuant to the Child Protection Duty Lawyer Guidelines, with the relevant legal information and/or phone number of the VLA Legal Help telephone service.

6. TERMS OF THE PROTOCOL

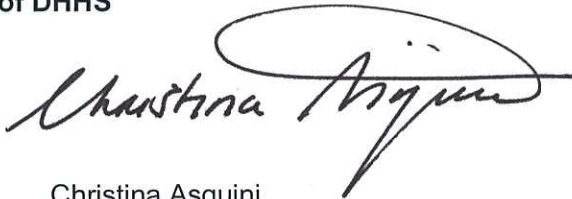
- 6.1. This protocol will commence on the date it is signed by both parties.
- 6.2. VLA and the DHHS agree to resolve and discuss in good faith any specific issues that may arise at the earliest opportunity, with the VLA Child Protection Program Manager and the DHHS Assistant Director (Child Protection Litigation Office) the relevant first contacts, and who will use their best endeavours to resolve the issue within 14 days. During this process, VLA and the DHHS will continue to perform their obligations under this protocol.
- 6.3. The terms of this protocol may be varied or amended by agreement of VLA and the DHHS in writing.
- 6.4. VLA and the DHHS agree to review the protocol at regular intervals with a view to continuing to improve access to legal assistance services for children and families involved in child protection proceedings.

On behalf of VLA



Name: Nicole Rich
Position: Executive Director Family, Youth and Childrens Law
Victoria Legal Aid
Date: 31.7/2019

On behalf of DHHS



Name: Christina Asquini
Position: Deputy Secretary, Community Services Operations Division
Department of Health and Human Services
Date: 25.7/2019

ANNEXURE A

SUMMARY INFORMATION FORM (FORM B)

SUMMARY INFORMATION FORM

COMPLETE FOR ALL EMERGENCY CARE APPLICATIONS

This form is provided to all legal parties, including self-represented parties

Name of CP practitioner bringing in the matter:	
Child Protection Division/Office and office number:	
Estimated time of arrival at Children's Court:	
Court	Melbourne Moorabbin Broadmeadows Other:
Date and time of removal by emergency care:	

Names of children/young person taken into emergency care	DOB	Aboriginal or Torres Strait Islander
		Yes/No/Unknown
		Yes/No/Unknown
		Yes/No/Unknown
		Yes/No/Unknown

Name of Parents <i>(Note that step-parents and de-factos fall within definition of 'parent' under CYFA)</i>	DOB	Aboriginal or Torres Strait Islander
Mother:		Yes/No/Unknown
Father:		Yes/No/Unknown
Step-mother:		Yes/No/Unknown
Step-father:		Yes/No/Unknown
Other:		Yes/No/Unknown

Names of non-family members relevant to the emergency care application <i>(this is relevant to determine whether Victoria Legal Aid have previously represented such persons)</i>	

Names of Siblings (including half siblings)	DOB	Subject to Children's Court proceedings previously?	Aboriginal or Torres Strait Islander
		Yes / No / Unknown	Yes/No/Unknown
		Yes / No / Unknown	Yes/No/Unknown
		Yes / No / Unknown	Yes/No/Unknown

Who are you expecting to attend Court?		
Child(ren)	Mother	Father
De Facto (F)	De facto (M)	Uncle/Aunt
Paternal GM	Maternal GM	Other extended family
Paternal GF	Maternal GF	No attendances

Is any party in custody or an in-patient? (e.g. This includes all form of custodial sentences such as remand and any in-patient facility (voluntarily or involuntarily) to address any health issue, including mental health)		
Who	Facility or prison name	Contact made

Possible legal conflict between siblings (if any)

(eg. Conflicting legal instructions or allegations of sexual abuse or physical violence between siblings)

Yes	No	Unknown
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What application are you filing today?

Protection application	<i>Which grounds (s.162):</i>					
	<i>a</i>	<i>b</i>	<i>c</i>	<i>d</i>	<i>e</i>	<i>f</i>
Application for new IAO	Yes			No		
Application to breach	<i>Specify order/condition breached?</i> Interim Accommodation Order Family Preservation Order Condition/s:					
Application for urgent variation	<i>What is to be varied?</i>					

What Order are you seeking today?

IAO	<i>Specify who are you seeking the IAO to today? If it is undecided write 'placement undecided'. Do not enter if the recommendation is that the placement is undisclosed.</i>	
If an IAO to OOHC is being proposed, have kinship options been considered and assessed to care for the child?	Yes	No
Provide details:		
Are you seeking an undisclosed placement?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Security Risk:

Do you anticipate any security issues at Court?	Yes (notify registry)	No
If YES, provide details		
Is there an IVO in place?	Yes	No
	Expiry date (if known):	
	AFM/ children listed:	Respondent:

Briefly outline why the child/young person was taken into emergency care

The details you provide in this section are based on the information you received and observed, information which may or not be relied upon as evidence by DHHS in any legal proceedings and will not preclude different or additional information being relied upon

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

Has an Aboriginal family-led decision making meeting been held for this case?			
Not applicable	Yes	No	Unknown

Have parties been personally served a copy of the application? <i>If no, explain why and any alternate attempts to inform parties of the application</i>			
Mother	Yes	No	
Father	Yes	No	
Young Person 12 years and over	Yes	No	
Other "parent" as defined in CYFA	Yes	No	
Do you have documents/orders pertaining to the application? <i>(e.g. PA, Affidavit/Declaration of service, IAO from Bail Justice)</i>	Yes	No	
Have relevant case notes been provided to the Court registry in compliance with Children's Court Direction No. 5 2013?	Yes	No	

SIGNED	
DATE	

Disclaimer

This form is designed to be a tool to promote efficient and effective communication from DHHS Child Protection to Victoria Legal Aid and other parties to proceedings in emergency care situations. As such the form does not purport to include all relevant information known to the department and the information contained herein is subject to review and further assessment. The department may seek to put additional information before the Court at any stage of the proceedings.

Unauthorised Use

This form is for the exclusive use of legal practitioners and court personnel in the administration of matters before the Court. Any unauthorised copying or distribution or other use of this document is prohibited without the express approval of DHHS.

ANNEXURE B

VLA OFFICE CONTACTS FOR THE NOTIFICATION BY THE DHHS OF EVERY NEW APPLICATION

VLA OFFICE	CONTACTS	COURT LOCATIONS
VLA Ballarat	<p>@: DHHSApplications-ballarat@vla.vic.gov.au</p> <p>Tel: (03) 5329 6222 Address: Central Highlands Region Area A, Level 1 75 Victoria St Ballarat VIC 3350</p>	Ballarat
VLA Bendigo	<p>@: DHHSApplications-bendigo@vla.vic.gov.au</p> <p>Tel: (03) 5448 2333 Address: Loddon – Campaspe Region 424 Hargreaves St Bendigo VIC 3550</p>	Bendigo Castlemaine Echuca Ouyen Swan Hill Kyneton Maryborough Kerang
VLA Broadmeadows	<p>@: DHHSApplications-broadmeadows@vla.vic.gov.au</p> <p>Tel: (03) 9302 8777 Address: North Western Suburbs Level 1, Building 1 Broadmeadows Station Centre, 1100 Pascoe Vale Rd Broadmeadows VIC 3047</p>	Broadmeadows
VLA Geelong	<p>@: DHHSApplications-geelong@vla.vic.gov.au</p> <p>Tel: (03) 5226 5666 Address: Barwon Region Level 2, 199 Moorabool St Geelong VIC 3220</p>	Geelong Colac
VLA Gippsland	<p>@: DHHSApplications-gippsland@vla.vic.gov.au</p> <p><i>Bairnsdale</i></p> <p>Tel: (03) 5153 6444 Address: Gippsland Region Branch Office 87A Main St Bairnsdale VIC 3875</p> <p><i>Morwell</i></p> <p>Tel: (03) 5126 6444 Address: Gippsland Region 4 Chapel St Morwell VIC 3840</p>	Morwell Bairnsdale Latrobe Valley Korumburra Omeo Orbost Sale Wonthaggi

VLA OFFICE	CONTACTS	COURT LOCATIONS
VLA Horsham	<p>@: DHHSApplications-horsham@vla.vic.gov.au</p> <p>Tel: (03) 5381 6000 Address: Wimmera Region 29 Darlot St Horsham VIC 3400</p>	<p>Horsham</p> <p>Ararat</p> <p>Edenhope</p> <p>Hopetoun</p> <p>Nhill</p> <p>St Arnaud</p> <p>Stawell</p>
VLA Melbourne	<p>@: DHHSApplications-melbourne@vla.vic.gov.au</p> <p>Tel: 1300 792 387 Address: 570 Bourke St Melbourne VIC 3000 GPO Box 4380 Melbourne Vic 3001</p>	<p>Melbourne</p>
VLA Moorabbin	<p>@: DHHSApplications-moorabbin@vla.vic.gov.au</p> <p>Tel: (03) 9090 8000 Address: 1140 Nepean Highway Moorabbin Victoria, 3189</p>	<p>Moorabbin</p>
VLA Mildura	<p>@: DHHSApplications-mildura@vla.vic.gov.au</p> <p>Tel: 1300 792 387 Address: Mallee Region 137 Thirteenth St Mildura VIC 3500</p>	<p>Mildura</p> <p>Robinvale</p>
VLA Shepparton	<p>@: DHHSApplications-shepparton@vla.vic.gov.au</p> <p>Tel: (03) 5823 6200 Address: Goulburn Region 320 – 322 Wyndham St Shepparton VIC 3630</p>	<p>Shepparton</p> <p>Benalla</p> <p>Cobram</p> <p>Corryong</p> <p>Mansfield</p> <p>Myrtleford</p> <p>Seymour</p> <p>Wangaratta</p> <p>Wodonga</p>
VLA Warrnambool	<p>@: DHHSApplications-warrnambool@vla.vic.gov.au</p> <p>Tel: (03) 5559 7222 Address: South Coast Region 185 Fairy St Warrnambool VIC 3280</p>	<p>Warrnambool</p> <p>Portland</p> <p>Hamilton</p>

